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STATE OF MINNESOTA

DISTRICT COURT - CIVIL DIVISION

COUNTY OF OLMSTED

THIRD JUDICIAL DISTRICT

Court File No.: 55-CV-14-8193

Case Type: Wrongful Death
and Personal Injury

Matthew Siems, individually, and as Trustee
for the next-of-kin of William Thomas
Siems, deceased, Crystal Bishop,
individually, and as parent and natural
guardian of Faith and Kaylyn Siems, minors,
and Amber Bishop, individually, and as
parent and natural guardian of Jeramiya
Bishop, a minor,

Plaintiffs,

vs.

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
FOR JUDGMENT**

Gerald Mohs, Entertainment Ventures LLC
d/b/a Wicked Moose Bar and Grill,
C.J.C. Enterprises, Inc. a/k/a CJC Enterprises,
Inc. d/b/a North Star Bar, and
Childs Enterprises LLC d/b/a The Tipsy Turtle,

Defendants. 

PROCEDURAL POSTURE AND APPEARANCES OF COUNSEL

The above-entitled matter came on for trial, the Honorable Joseph F. Chase presiding without a jury, at the Olmsted County Courthouse in Rochester, Minnesota, on September 13, 2016. The matter was tried to the Court from September 13 to September 16, 2016. Final arguments were heard by the Court on September 20, 2016.

Plaintiffs, with the exception of Plaintiffs Faith and Kaylyn Siems, appeared personally, and by and through their attorney, Charles James Suk, Suk Law Firm, Ltd., Rochester, Minnesota. Defendant Gerald Mohs (hereinafter Mohs) appeared personally, and by and through

his attorney, Kathleen K. Curtis, Tewksbury & Kerfeld, Minneapolis, Minnesota. Defendant Childs Enterprises LLC, d/b/a the Tipsy Turtle (hereinafter referred to as the Tipsy Turtle), appeared by and through its attorney, Steven Pattee, Pattee Law Firm, Lakeville, Minnesota. Defendants Entertainment Ventures LLC, d/b/a Wicked Moose Bar and Grill (hereinafter referred to as the Wicked Moose) and C.J.C./CJC Enterprises, Inc. d/b/a North Star Bar (hereinafter referred to as the North Star) had previously settled their portions of Plaintiffs' claims and have been released pursuant to Pierringer Agreements.

The Court entered its Verdict and Findings of Fact, Conclusions of Law, and Order for Judgment on October 14, 2016, staying entry of judgment at the request of all counsel. Post-trial motions were heard on December 16, 2016. The Court, having heard the evidence at trial, reviewed the post-trial submissions and heard the arguments of counsel at the post-trial motion, makes the following Amended Findings of Fact, Conclusions of Law, and Order for Judgment:

AMENDED FINDINGS OF FACT

1. On September 20, 2014, at approximately 8:12 p.m., Mohs operated a motor vehicle while intoxicated. Immediately after leaving the Wicked Moose, Defendant Mohs negligently drove approximately two blocks west in the eastbound lanes of U.S. Highway 14 / 12th Street SE, Rochester, Minnesota, a divided, four lane road.

2. Mohs' vehicle struck a vehicle operated by Plaintiff Amber Bishop head-on. In the rear seat of the Bishop automobile were two passengers, Jeramiya Bishop (hereinafter referred to as Jeramiya), age 7, and his cousin, Ms. Bishop's nephew, William Siems (hereinafter referred to as William), age 9.

3. Mohs had traveled with his wife to Treasure Island Resort and Casino in Red Wing, Minnesota, earlier that day. It was Mohs' intention to gamble and drink to the point of intoxication.

4. Using standardized and generally accepted methods of calculation, the forensic toxicologists presented by Plaintiffs and the Tipsy Turtle both determined that Mohs consumed approximately 21 one-ounce alcoholic drinks during the course of the afternoon-evening of September 20, 2014.

5. Mohs and his wife arrived at Treasure Island between 1:30 and 2:00 p.m., had a drink together, and then parted ways to gamble.

6. Upon separating from his wife, Mohs began ordering and drinking two mixed drinks at a time, Windsor whiskey and 7-Up (Windsor and Seven), as he moved around the casino, gambling. Mohs purchased each of his rounds at separate bars within the casino. Mohs testified to a belief that he consumed 6-8 alcoholic drinks at Treasure Island.

7. Mohs finished his gambling shortly before 4 PM and met his wife back at the bar. Mrs. Mohs suggested they leave for their usual stop at the nearby Tipsy Turtle. Mohs testified that he knew he was intoxicated as they left Treasure Island. However, according to his wife, Mohs did not yet outwardly display signs of intoxication at that time.

8. Mohs now has no current recollection of events during the afternoon and evening of September 20, 2014, following his departure from Treasure Island. He was able, however, to describe to police the events of the afternoon and evening upon his subsequent arrest and interrogation in Rochester. While inaccurate as to specific times and amounts of liquor consumed at each bar, Mohs' rendition of facts to police following his arrest was generally consistent with direct testimony from other witnesses and video from the North Star and the

Wicked Moose. Mohs did not indicate to police that he had stopped at the Tipsy Turtle. However, the arresting officer's questions may not have been understood by Mohs as calling for that information. The Court is convinced that Mohs and his wife stopped and drank alcohol at the Tipsy Turtle.

9. Arriving at the Tipsy Turtle a few minutes after leaving Treasure Island, Mohs and his wife walked up to the bar from the front door. The bar area of the Tipsy Turtle is located in a large, open room with sit-down and stand-up tables. Each ordered a drink from the bartender, Casey Luhman. Luhman was the sole Tipsy Turtle staff person on duty while Mr. and Mrs. Mohs were there and served them all of their drinks. Casey Luhman has no recollection of the Mohs' being present in the Tipsy Turtle that afternoon. Mrs. Mohs testified that there were approximately 10-15 patrons in the bar while she and her husband were there. Luhman says that the patronage swelled to 25 with the arrival of some softball players between 4:30-5:30 PM.

10. Taking their drinks with them from the bar area, Mohs and his wife went to the pool room, which is adjacent to the main room and separated by a wall. That wall has a large, unframed doorway and a large unframed opening at window-height, which also served as a pass-through for the bartender to serve drinks to pool players. Mr. and Mrs. Mohs played three or four games of pool. Mohs also walked up to the jukebox, located by the front door of the bar, and to the bar where he placed additional drink orders with Luhman. Luhman also served Mohs and his wife through the pass-through window into the pool room where their table was located.

11. Mrs. Mohs testified that she drank sloe gin fizzes, while her husband continued to drink Windsor and Sevens. Mrs. Mohs stated that her husband ordered two drinks for himself for each drink that he ordered for her; and she had had at least four drinks served to her. I find Ms. Mohs' testimony credible.

12. Mrs. and Mrs. Mohs were at the Tipsy Turtle for approximately an hour.
13. Casey Luhman received drink orders from Mohs, picked up empties, and had opportunity to observe him for the hour that Mohs and his wife were drinking at the Tipsy Turtle.
14. I find incredible Ms. Luhman's testimony that she would not and did not serve a patron more than one drink per hour.
15. Plaintiffs' toxicologist, Ann Manly, calculated that Mohs likely consumed 10 one-ounce drinks at the Tipsy Turtle. Manly opined that Mohs would have shown obvious signs of intoxication at the Tipsy Turtle, given the total amount he had consumed between the two bars.
16. Defendant Tipsy Turtle's toxicologist, Glen Hardin, concluded that Defendant Mohs consumed eight one-ounce drinks at the Tipsy Turtle, in addition to eight drinks at Treasure Island. Hardin concluded, based on his absorption calculations and the fact that Mohs was an experienced drinker, that Mohs would not have shown obvious signs of intoxication at the Tipsy Turtle.
17. Mrs. Mohs testified that her husband showed obvious signs of intoxication, including slurring his words, bloodshot eyes, difficulties walking, and starting to walk into the ladies room, while still at the Tipsy Turtle. Given the very large number of drinks Mohs had consumed at Treasure Island and the Tipsy Turtle, I find her testimony credible.
18. Mohs consumed four alcoholic drinks at the North Star and one at the Wicked Moose. The Court has no evidence that Mohs consumed alcohol at any location other than at the four bars identified. I find it unlikely that he consumed alcohol anywhere else. Subtracting the five drinks consumed in Rochester from the total of 21 he consumed, I find that Mohs drank a total of 16 one-ounce alcoholic drinks at Treasure Island and the Tipsy Turtle. While it is

impossible to determine with certainty exactly how many of those 16 drinks Mohs was served and consumed at the Tipsy Turtle, I find it probable he was served and drank at least six one-ounce alcoholic drinks there, more likely eight, and possibly as many as ten.

19. Mohs arrived at the North Star at approximately 7 PM. The distance between the Mohs' home and the North Star Bar is 4.1 miles. There is no evidence that Mohs stopped along the way to the North Star for a drink elsewhere; there are few bars on the route he would likely have driven; and I find it improbable, based on all of the circumstances, that Mohs drank at any other bar or location in that interval. There is no evidence Mohs obtained or had in his possession at any time that day or evening, alcohol that he could have consumed outside a bar.

20. Mohs left the North Star at approximately 7:45 PM and arrived at the Wicked Moose, which is 2.3 miles away, around 7:50 PM. At the Wicked Moose, Mohs ordered and consumed one drink. Mohs was ultimately denied service of a second drink by the Wicked Moose, was told to leave, exited to his car at 8:11 PM, and drove away.

21. The collision occurred less than a minute after Mohs left the Wicked Moose. Mohs left the scene of the crash on foot in the short time before law enforcement arrived. The shortest pedestrian route between the scene of the crash and the North Star, where Mohs is again seen on video arriving at 9:30 PM (and leaving shortly thereafter without getting another drink), is the bike path which leads through Slatterly Park, to Mayo Civic Auditorium and then to Broadway. That distance is 1.9 miles. If Mohs walked to the North Star by following 12th Street west and then proceeding north on Broadway, he walked 2.3 miles. Whatever his route, approximately one hour and fifteen minutes elapsed between his departure from the crash site and his (second) arrival at the North Star. I find it improbable that he stopped for another drink along the way.

22. The walking distance along Broadway, from the North Star to the location of his arrest, is 2.0 miles. Approximately one hour and ten minutes elapsed between Mohs' (second) departure from the North Star and his arrest. Again, I find it improbable that he stopped for another drink.

23. There is no evidence that Mohs was obviously intoxicated when he was served alcohol at Treasure Island.

24. Mohs was intoxicated when he was at the Tipsy Turtle. By this I mean that the alcoholic drinks Mohs had consumed at Treasure Island and at the Tipsy Turtle had affected his reason and faculties, and caused him to lose control, to some extent, of the actions or motions of his person or body.

25. Mohs was obviously intoxicated when he was served alcohol at the Tipsy Turtle. I find it more likely than not, given the amount of alcohol Mohs had been served that afternoon at Treasure Island, the number of additional drinks that he consumed while at the Tipsy Turtle, and his wife's testimony that he displayed obvious, outward manifestations of intoxication while there, that he was intoxicated while at the Tipsy Turtle such that, at the time the bartender had served him multiple alcoholic drinks, that bartender, using usual and reasonable powers of observation, saw or should have seen that Mohs was intoxicated. I do not find credible or probable the suggestion that Mohs' intoxication would have remained indiscernible or undetectable by a reasonable observer after he had consumed eight, ten, or twelve drinks since 1:30 PM.

26. Likewise, the Court was not and is not persuaded by the contention that Defendant Mohs may have consumed alcohol at other unidentified locations in Rochester on the

date of the crash—and thus consumed less at The Tipsy Turtle. Defendant Mohs himself told police that he had not consumed alcohol at any other Rochester bar. Mrs. Mohs gave credible testimony from which it may be found that Defendant Mohs had at least 6 drinks, probably 8, and possibly 10, at The Tipsy Turtle, and that her husband appeared obviously intoxicated when he was served alcohol there on the day of the crash.

27. The sale of multiple alcoholic beverages by the Tipsy Turtle to Mohs when he was obviously intoxicated was a proximately contributing and substantial cause of Mohs' intoxication on the evening of September 20, 2016, and more specifically at the time of his collision with Amber Bishop's vehicle.

28. Mohs was obviously intoxicated when he was served four alcoholic drinks at the North Star in Rochester.

29. The sale of alcoholic beverages by the North Star to Mohs when he was obviously intoxicated was a proximately contributing and substantial cause of Mohs' intoxication on the evening of September 20, 2016, and more specifically at the time of his collision with Amber Bishop's vehicle.

30. Mohs was obviously intoxicated when he was at the Wicked Moose bar in Rochester.

31. Although Mohs' consumption of this last drink at the Wicked Moose shortly preceded Mohs' collision with Amber Bishop's vehicle, half of the alcohol in a drink is absorbed within twenty minutes of its consumption. Thus there was time for a portion of the alcohol in that drink to be absorbed into Mohs' system prior to the crash. The sale of that alcoholic beverage to Mohs when he was obviously intoxicated was a proximately contributing and

substantial cause of Mohs' intoxication on the evening of September 20, 2016, and more specifically at the time of his collision with Amber Bishop's vehicle.

32. Mohs drove west down the eastbound side of divided Highway 14, directly into oncoming traffic, because he was intoxicated. Mohs' intoxication on the evening of September 20, 2016, proximately caused Mohs' collision with Amber Bishop's vehicle and the death and injuries that occurred in that collision, in that Mohs' intoxication was a material element and a substantial factor in bringing about the collision and resultant death and injuries.

33. The Court found, and finds, sufficient evidence to support the inference that alcohol caused Defendant Mohs to drive the wrong way down a major four lane roadway in Rochester. An accident reconstructionist is not necessary to prove causation. The nature of Mohs' driving conduct—turning, apparently oblivious to his surroundings, to drive west-bound on the east-bound side of the heavily-traveled, divided roadway known in Rochester as “the Beltline;” and continuing to drive the wrong way for at least two blocks, and through a major intersection, directly into oncoming east-bound traffic—is so egregiously unlawful and obviously dangerous that, when coupled with evidence establishing Mohs' intoxication, reasonably, if not inescapably, gives rise to the inference that his intoxicated condition directly caused this crash.

34. As a result of the collision, the three occupants of the Bishop automobile sustained the following injuries:

Amber Bishop

- Right navicular fracture
- Right thumb chronic ulnar collateral ligament sprain at MCP joint
- Complaints of pelvic/abdominal, right thigh, right hip, right knee, and mandibular pain in the emergency room

Jeramiya Bishop

- Right iliacus and retroperitoneal hematoma, mild blood products in the paracolic gutters and pelvis.
- Local intrathecal hyperattenuating material, possible hemorrhage at T11-12 without sig compression of the thecal sac.
- Scattered traumatic subarachnoid hemorrhage in both cerebral hemispheres as well as small foci of hemosiderin deposition compatible with intraventricular blood in the occipital horns. Partially visualized dorsal epidural hematoma overlying the upper thoracic spine.
- Focal contusion of the lower thoracic spinal cord at T11-12 with cord swelling, intramedullary T2 signal and associated subdural hematoma causing moderate mass effect on the cord. Dorsal epidural hematoma extending from T3 inferiorly through the lumbar spine. From the level of T11-12 inferiorly through the lumbar spine, there is progressive near-complete to complete effacement of CSF around the cord and cauda equine nerve roots secondary to epidural hematoma.

William Siems

- PEA arrest on scene with return of pulses after CPR.
- Occipito-atlantal dislocation
- Subarachnoid hemorrhage and mild hydrocephalus.
- Diffuse axonal injury including pons and medulla.
- Focal spinal injuries in thoracic and lumbar spine.
- Right retroperitoneal hematoma.
- Flexion/distraction injury at L2, L3 and probable hematoma.
- Right L3 transverse process fracture.
- Pancreatic laceration.
- Shock kidney.
- Likely duodenal and proximal jejunum bowel injury without frank perforation.

William Siems Damages

35. William's brain/spinal cord injuries resulted in a complete disruption of his brain and spinal cord. He was removed from life support the morning following the collision. As a result of his injuries, medical bills totaling \$60,404.87 were incurred in the effort to save his life. \$10,143.48 was expended for his funeral and burial.

36. William had an extremely close relationship with his parents and siblings.

37. Given the nature of the relationships which the next of kin had with William, the family has sustained a catastrophic loss due to the loss of his aid, comfort, advice, and

companionship. The Court finds that a reasonable valuation of the loss sustained by the Siems family is \$1 million, in addition to the medical, funeral, and burial expenses outlined above.

Jeramiya Bishop Damages

38. Besides sustaining significant lacerations to his face, Jeramiya suffered spinal injuries described above which have rendered him a paraplegic with neurogenic bowel and bladder. As a result of his injuries, Jeramiya has medical bills to the date of trial totaling \$239,926.49. He has additionally received near-constant, uncompensated care from his mother during the period of time from the date of the accident to the conclusion of the trial, the reasonable value of which the Court finds to be \$200 per day, or a total of \$146,000. As a result, Jeramiya's total past medical expenses total \$385,926.49.

39. Given that Jeramiya's paraplegia, neurogenic bladder, and neurogenic bowel are permanent injuries, he will require skilled assistance, specialized transportation, and a living facility modified to accommodate his infirmities. Mary Kay Kolar assessed his needs and generated a report and testified at trial that Jeramiya Bishop's lifetime care costs will be:

Home Care Services	\$1,466,067
Medical care/Therapy	343,200
Medications	94,920
Assistive Devices	232,572
Disposable Goods	187,624
Handicap Accessible Vehicles (4 vehicles)	476,000
Housing	<u>215,000</u>
	\$3,015,383

40. Ms. Kolar's report of Jeramiya's long-term care was stated in present dollars. No cost of living adjustments were considered nor was any discount to present value used. With the exception of the two deductions described below, I find each of the above sums reasonable and appropriate.

41. A home, subsequently modified for handicapped purposes, has been purchased for Jeramiya out of a special needs trust established from his share of earlier settlements, at a cost totaling \$200,000, rather than the \$215,000 estimated by Ms. Kolar. It is appropriate to reduce the housing component from \$215,000 to \$200,000.

42. Had he not been injured, Jeramiya likely would have required a similar number (4) of standard vehicles over his lifetime. The Court deducts \$80,000 from the transportation costs outlined above.

43. Based upon the foregoing, the Court finds that the lifetime specialized care costs of Jeramiya, caused by the collision-related injuries, total \$2,920,383.

44. At the time of his injury, Jeramiya had recently started second grade. Concerns had been raised about his attention in school and activity-related class distractions, although he had not been formally diagnosed with ADHD. Similarly, Jeramiya had expressed some oppositional tendencies both at home and at school; however, he has never been formally diagnosed with an oppositional defiant disorder. During the course of his hospitalization and aftercare, Jeramiya was diagnosed with ADHD and prescribed Ritalin. He has been diagnosed with depression, which is presently being medicated with sertraline (Zoloft).

45. Since Jeramiya (born May 28, 2007) is presently only 9 years old, he does not have a work history nor has he yet demonstrated long-term vocational interests. Accordingly, he was asked to undergo vocational evaluations.

46. Justin M. King tested and interviewed Jeramiya and his mother and reviewed his relevant medical and educational records. Dr. King concluded that Jeramiya's intellectual skills fell into the average category and that, based upon that intellectual testing, he had the capacity to graduate high school and complete technical school, or obtain post-high school education up to

the point of a bachelor's degree. However, in terms of his behavioral and emotional functioning, Dr. King found Jeramiya had problems sustaining and regulating attention and a tendency to be overly active and rush through work. His psychological profile indicates that Jeramiya experiences feelings of unhappiness, sadness and stress, perceives himself as being unsuccessful and generally unreliable, feels alienated and excluded by others, and generally feels inadequate compared to his peers.

47. Dr. King noted that individuals with spinal cord injuries (SCI) generally have a shortened work life, because they experience weakness and loss of muscle strength over time, and the abnormal stresses on the upper extremities tend to physically wear out SCI victims.

48. It was Dr. King's opinion that, given his intellectual and emotional profiles, had he not been injured, Jeramiya would have been well suited to enter the skilled trades upon high school graduation. Dr. King calculated that, after completing the Rochester Community Technical College two semester building utilities maintenance program (BUM) and entering a union apprenticeship program, Jeramiya would have had a starting salary of \$59,092, inclusive of benefits. This would have brought Jeramiya lifetime earnings (including benefits) of \$6,078,790, if he retired at age 65.

49. Since Jeramiya cannot perform the tasks of a skilled tradesman, Dr. King then calculated what he could be expected to earn as a high school graduate or attaining an associate's degree (AA), with retirement at ages 50, 55, and 60. As a high school graduate with an AA, retiring at age 60, Jeramiya would sustain a loss of earnings capacity of \$3,129,172 from what he might have earned as a skilled tradesman. At retirement age 55, his lifetime loss of earning capacity would be \$3,558,244. At retirement age 50, his life time earnings loss would be \$4,011,133. Assuming Jeramiya completed only a high school education, Dr. King has said, his

life time earnings loss at age 60 would be \$3,497,563, at age 55 it would be \$3,862,154, while at age 50 it would be \$4,246,981.

50. The Tipsy Turtle's vocational expert, Jan Lowe, reported that Jeramiya demonstrated the capacity to successfully complete an associate's or even a bachelor's degree, and that once he completes such a degree, his injuries are unlikely to have any adverse impact on his earning capacity.

51. The Court finds Dr. King's testimony and conclusions more persuasive. Jeramiya's catastrophic injuries and the consequent limitations they place upon him foreclose all career paths requiring extensive physical activity, and significantly limit his capacity to perform even more sedentary lines of work in the competitive work world. His injuries also shorten his work life expectancy. Taking an optimistic view of Jeramiya's vocational and earnings outlooks, the Court adopts a mid-point retirement age of 55 and an educational attainment of an AA degree, yielding a loss of future earnings capacity in the sum of \$3,558,244.

52. Jeramiya is understandably depressed, anxious, lacks self-esteem and believes that he has little to offer his peers. His loss of mobility, his permanent need to wear diapers and be catheterized to urinate, being given enemas to stool, all set him apart from other children. He is a boy who will never again run, play sports, or participate in many of the enjoyable and formative activities of childhood and adolescence.

53. There is no yardstick to value Jeramiya's pain, suffering, emotional distress, and impairment of function in monetary terms. What has been taken from Jeramiya is literally priceless. To put a dollar figure upon these losses, as the Court is compelled to do, the Court finds that Jeramiya's past pain, suffering, emotional distress, and impairment of function is

reasonably valued at \$1 million. His future pain, suffering, emotional distress and impairment of function is reasonably valued at \$5 million.

Amber Bishop Damages

54. Amber Bishop, now 31 years of age, is the single mother of Jeramiya and another son, Jameson, who was born approximately one year ago. Amber Bishop was the driver of the automobile involved in the head-on crash of September 20, 2014 with Mohs.

55. As a result of the crash, Amber Bishop's primary injuries, detailed above, have required several surgeries on the thumb of her dominant right hand, which her hand surgeon, Dr. Tamara Alexandrov, described at trial. The surgeries have not yielded an optimum result, so fusion of the thumb is still a consideration. Amber Bishop described her hand restrictions and lack of manual dexterity, which complicate her activities of daily living and limit her vocational choices. Amber Bishop also testified to a consistent low level pain associated with her injury which increases with certain activities. The parties stipulated that the necessary and reasonable value of the medical bills incurred by Amber Bishop in the treatment of her injuries arising out of the auto crash totaled \$91,417.54.

56. Dr. Myron Kaminsky, the podiatrist who treated Amber Bishop's navicular fracture, testified that it had healed after somewhat lengthy casting and restriction to a wheelchair for the first month after the crash, followed by crutches and a walking cast. Dr. Kaminsky believes that she has sustained no permanent impairment as a result of her foot injury.

57. Amber Bishop is a high school graduate who has worked since she was 15 years old and has been self-supporting since high school.

58. Amber Bishop entered Rochester Community Technical College's (RCTC) law enforcement program in 2003. She progressed in the program until a serious knee injury during a training exercise forced her to withdraw. Thereafter, she held various, mostly unskilled, jobs during the years before the crash.

59. At the time of the crash, Amber Bishop had obtained employment as a cleaning person with Merry Maids and as an apartment manager with Bessler Management managing several buildings, including the one where she resided with her son. While she worked at Bessler, she performed maintenance and repair work on several apartment buildings, and developed an aptitude for mechanical work, especially HVAC, plumbing and electrical. She applied for and was accepted into RCTC's two semester building utility maintenance (BUM) program shortly before the crash, although her start date of January 2015 was not established until after the crash.

60. Amber Bishop's annual earnings between her two jobs would have been \$26,000 in 2014 if her injuries had not forced her to withdraw from the labor force. Dr. Alexandrov, her hand surgeon, provided her work releases. Amber Bishop's total wage losses resulting from the collision, up to the date of trial, are approximately \$49,000.

61. Commencing her studies in the BUM program in January 2015, Amber Bishop did well academically. However, her hand condition worsened. It became apparent, after two surgeries, that she would not be able to successfully complete the BUM program. The second surgery has left her with an inability to grasp and manipulate objects or even open a can with her right hand. As a result, Amber Bishop withdrew from the BUM program.

62. Dr. King tested Amber Bishop over a period of three days to determine her work capabilities, both physical and cognitive. Dr. King calculated that had Amber Bishop been able

to complete the BUM program and then undertaken training in one of the skilled trades, such as plumbing. She could have expected (after completing an apprenticeship) initial earnings of \$59,925/year, with a lifetime earnings capacity of \$2,899,192, including benefits. As a result of her hand injury foreclosing her from completing her BUM program, Amber Bishop entered RCTC's two semester accounting clerk program where she expects to earn an AA degree. Dr. King testified that she can expect a starting salary in that field of \$22,984/year, or lifetime earnings of \$1,032,008. If Amber Bishop earns a BA in accounting, she may expect a starting salary of \$38,293/year, or a lifetime earnings of \$1,613,607. Under the accounting clerk AA scenario, Amber Bishop would experience a lifetime loss of earnings of \$1,867,184 versus the BUM program, while under the accountant BA scenario, her lifetime loss versus the BUM program would be \$1,285,585.

63. Jan Lowe concluded that, due to her knee injury and a bunion surgery, as well as a sprained wrist which Amber Bishop had incurred while working for Merry Maids a month before the motor vehicle collision, Ms. Bishop would have been unlikely to complete the BUM program and go into an apprenticeship program in the skilled trades. Using only the expected starting salary of a graduate of the BUM program and disregarding any progression into the skilled trades, Ms. Lowe concluded that Amber Bishop was not only more suited to becoming an accounting clerk than performing building utility maintenance, but would also earn more money as an accounting clerk. If she earned a BA in accounting, Ms. Lowe testified, Amber Bishop's lifetime earnings would be greater than if she had gone into building maintenance. Ms. Lowe concluded that Amber Bishop had sustained no loss of future earning capacity because of the injuries sustained in the collision.

64. The Court finds that Amber Bishop was motivated to complete the BUM program and to proceed into an apprenticeship program in the skilled trades. I find it unlikely that her knee injury, bunion surgery, and wrist sprain would have kept her from skilled trade work. I find that Amber Bishop's loss of earnings capacity is reasonably valued at the difference between what she could have earned through completing the BUM program and a union apprenticeship, and what she will earn with a BA in accounting, or \$1,285,585 over her lifetime.

65. Of Amber Bishop's injuries, the most significant is to her right thumb, which has left her with an inability to grasp and manipulate not only such large items as door handles or jars, but to even grip a pen or pencil in a normal fashion. Given the amount of time which has passed since the date of her injury, it is likely that her injury is permanent, although the final degree of her impairment is not yet known, being dependent upon whether she will have to undergo a thumb fusion. She has had continuing pain in her right hand, which increases with activity. The court finds that the reasonable value of her past pain, suffering, emotional distress and impairment of function resulting from this injury is \$25,000, while the value of her future pain, suffering, emotional distress and impairment of function is \$50,000.

AMENDED CONCLUSIONS OF LAW

66. On September 20, 2014, Mohs negligently operated a motor vehicle while intoxicated and collided with the vehicle operated by Amber Bishop. Mohs' negligence was a proximate and direct cause of the collision and resultant death and injuries. Mohs' casual fault for the collision, death, and injuries is reasonably apportioned at 50%.

67. Mohs became intoxicated at Treasure Island, but his intoxication was not obvious while he was there. Therefore Treasure Island did not make an illegal sale to Mohs and has no liability under the Civil Damage Act.

68. The Tipsy Turtle illegally sold alcoholic beverages to Mohs on September 20, 2014, by selling multiple drinks to him when he was obviously intoxicated. This illegal sale substantially contributed to and caused Mohs' intoxication; and Mohs' intoxication proximately and directly caused and had a substantial part in bringing about the collision, death, and injuries later that evening. The Tipsy Turtle's causal fault for the collision, death, and injuries is reasonably apportioned at 25 percent.

69. The North Star illegally sold alcoholic beverages to Mohs on September 20, 2014, by selling four drinks to him when he was obviously intoxicated. This illegal sale substantially contributed to and caused Mohs' intoxication; and Mohs' intoxication proximately and directly caused and had a substantial part in bringing about the collision, death, and injuries later that evening. The North Star's causal fault for the collision, death, and injuries is reasonably apportioned at 20 percent.

70. The Wicked Moose illegally sold one alcoholic beverage to Mohs on September 20, 2014, when he was obviously intoxicated. This illegal sale substantially contributed to and caused Mohs' intoxication; and Mohs' intoxication proximately and directly caused and had a substantial part in bringing about the collision, death, and injuries later that evening. The Wicked Moose's causal fault for the collision, death, and injuries is reasonably apportioned at 5 percent.

71. Amber Bishop was not negligent in the events leading up to and at the time of September 20, 2014, collision.

72. The trustee and next-of-kin of William Siems are entitled to judgment against Mohs and the Tipsy Turtle in the sum of \$1,070,548.35, proportionate to the share of causal fault of each defendant, plus costs and prejudgment interest.

73. Jeramiya Bishop is entitled to judgment against Mohs and the Tipsy Turtle in the sum of \$12,864,553.49, proportionate to the share of causal fault of each defendant, plus costs and prejudgment interest. Since Jeramiya is the beneficiary of a special needs trust, all sums which are received on behalf of Jeramiya pursuant to this judgment shall be made payable to the Jeramiya Bishop Special Needs Trust.

74. Amber Bishop is entitled to judgment against Mohs and the Tipsy Turtle in the sum of \$1,501,002.54, proportionate to the share of causal fault of each defendant, plus costs and prejudgment interest.

75. The Court, pursuant to its discretion to determine the fair proportion of costs and disbursements to be taxed against each Defendant, determines that it is not appropriate to tax costs against Defendants Entertainment Ventures LLC, d/b/a Wicked Moose Bar and Grill and C.J.C. Enterprises, Inc. a/k/a CJC Enterprises, Inc. d/b/a North Star Bar. These defendants settled Plaintiffs' claims before most of Plaintiffs' taxable costs were incurred. Defendant Gerald Mohs admitted liability and had tendered his remaining liability policy limits well before trial. This case proceeded to trial solely as a result of The Tipsy Turtle's liability and damages defenses. Therefore, all costs incurred by Plaintiffs shall be taxed against The Tipsy Turtle.

76. Plaintiffs served and filed a Rule 68 Offer of Settlement on November 30, 2015 against The Tipsy Turtle in the amount of \$1,000,000, the amount of The Tipsy Turtle's dram shop coverage. The Tipsy Turtle did not respond to the Rule 68 Offer. Therefore, Plaintiffs are entitled to recover double their taxable costs against The Tipsy Turtle pursuant to MRCP Rule 68.03 (b)(2). Taxable costs shall be determined within 45 days of the date of final entry of judgment pursuant to MRCP Rule 54.04 (2).

77. The three Plaintiffs (Amber and Jeramiya Bishop, and Matthew Siems, et al. on behalf of William Siems, deceased), accepted underinsured motorist benefits in the sum of \$100,000 each prior to trial from Plaintiff Amber Bishop's auto carrier, Country Financial. Plaintiff Matthew Siems, et al., on behalf of William Siems, deceased, received an additional sum of \$150,000 in underinsured motorist coverage from the Siems family auto insurer, American Family Insurance. The pretrial underinsured motorist recoveries constitute a collateral source to be offset from the judgment against Defendant Mohs, the underinsured motorist. Because The Tipsy Turtle was not an "underinsured *motorist*", The Tipsy Turtle is not entitled to underinsured motorist collateral source deduction from the damages assessed against it.

78. Defendants are entitled to an offset of damages for PIP reimbursements received by each Plaintiff as follows:

- Plaintiff Amber Bishop - \$40,000
- Plaintiff Matthew Siems, et. al., on behalf of William Siems, deceased - \$22,000
- Jeramiya Bishop, a minor - \$20,000

79. The remainder of Plaintiffs' medical bills, after PIP payments, were paid by Medical Assistance and administered by third parties pursuant to the United States Social Security Act. Accordingly, neither the bills nor the payments made by Medical Assistance are collateral sources pursuant to Minn. Stat. 548.251 Subd. 1 (2) and Plaintiffs are entitled to recover the full amount of their medical bills not reimbursed by PIP.

80. On December 7, 2015 Defendant Mohs' insurer issued a formal written offer to Plaintiffs of its remaining liability limits of \$97,500 pursuant to Minn. Stat. § 549.09 Subd. 1(b).

Plaintiffs conceded that prejudgment interest should be calculated on the offer, not the full judgment amount. Accordingly, Plaintiffs are entitled to 10% pre-judgment interest against Defendant Mohs on the amount of the offer, \$97,500, from September 30, 2014, the date of notice of claim, through December 7, 2015, when the written settlement offer was extended, in the amount of \$11,566.46.

81. Plaintiffs are entitled to an award of 10% pre-judgment interest against The Tipsy Turtle from the date of service of the notice of claim (May 12, 2015) to the date of entry of judgment on the past damages sustained by each Plaintiff, calculated upon the following damages:

Amber Bishop

Non-Pip medical bills to the date of trial	\$ 71,417.54
Non-PIP wage losses to the date of trial	\$ 29,000.00
Pain, suffering, impairment of function and emotional distress to the date of trial	<u>\$ 25,000.00</u>
Sub-Total	\$125,417.54

Jeramiya Bishop

Non-PIP medical bills to the date of trial	\$ 365,926.49
Pain, suffering, impairment of function	<u>\$1,000,000.00</u>
Sub-Total	\$1,365,926.49

Trustee and Next-of-Kin of William Thomas Siems, deceased

Non-PIP medical bills	\$ 40,404.87
Non-PIP reimbursed funeral expenses	\$ 8,143.48
Family's loss of aid, comfort and advice	<u>\$1,000,000.00</u>
Sub-Total	\$1,048,548.20

Pre-Judgment Interest Assessed Against The Tipsy Turtle

Plaintiffs' total damages entitled to prejudgment interest	\$2,539,892.10
10% annual prejudgment interest	\$ 253,989.10 per year
Daily total prejudgment interest	\$ 695.86 per day

Daily prejudgment interest assessed against Defendant Tipsy Turtle (May 12, 2015 to date of entry of judgment) \$ 173.97 per day

82. Pursuant to the motion of Plaintiff Crystal Bishop, the net Mohs recovery shall be allocated between Plaintiffs on an equal basis.

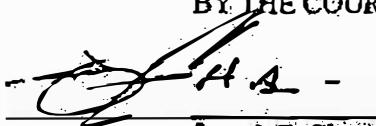
LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated:

Chase, Joseph

BY THE COURT

2017.01.13

 **15:48:22**

Joseph F. Chase
Judge of District Court

-06'00'

JUDGMENT

I hereby certify that the forgoing Amended Findings of Fact, Conclusions of Law, and Order for Judgment, dated _____, by the Honorable Joseph F. Chase constitutes the judgment of this Court.

Dated:

BY THE DEPUTY CLERK

 **2017.01.13**

15:54:00 -06'00'

Charles L. Kjos
Court Administrator